

It confirms the fears of every small business owner, every farmer, school and hospital administrator, both large and small, that the Obama administration knows that using the Clean Air Act to regulate climate change is bad for America.

They know it, but for political reasons, they have ignored the science, the consequences to our economy and the impact to the American people.

The memo states, "Making the decision to regulate CO₂ under the Clean Air Act for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities. Should EPA later extend this finding to stationary sources, small businesses and institutions would be subject to costly regulatory programs."

The document also highlights that EPA undertook no "systemic risk analysis or cost-benefit analysis" in making their endangerment finding.

The White House legal brief questions the link between the EPA's scientific technical endangerment proposal and the EPA's political summary.

EPA Administrator Jackson said in the endangerment summary that "scientific findings in totality point to compelling evidence of human-induced climate change, and that serious risks and potential impacts to public health and welfare have been clearly identified..."

But the Obama administration's memo states that this is not accurate.

The memo actually questions the science behind designating CO₂ as a health threat stating the scientific data on which the agency relies are "almost exclusively from non-EPA sources."

The memo goes on to say the essential behaviors of greenhouse gases are "not well determined" and "not well understood."

This memo confirms that the administration has so far ignored its own advice.

What is somewhat surprising is that those who express these concerns are ridiculed or, even worse, attacked by administration officials.

In one instance, attempts were made by administration personnel to smear the reputation of a career employee at the Small Business Administration.

This was a person who offered a reasonable and thoughtful critique of the impact the endangerment finding has on small business.

This is unacceptable behavior by the administration.

Strangely enough, not just the authors of the Obama administration legal brief, but also environmental groups, disagree with EPA Administrator Jackson's position that a targeted approach under the Clean Air Act is legal and appropriate.

The Sierra Club's chief climate counsel stated last year that "the Clean Air Act has language in there that is kind

of all or nothing if CO₂ gets regulated and it could be unbelievably complicated and administratively nightmarish."

I have warned the administration that groups such as these will sue the EPA if the EPA does not capture both large and small emitters. She has dismissed such threats. This is despite the Wall Street Journal report last month that a representative of the Center of Biological Diversity stated her group is prepared to sue for regulation of smaller emitters, such as farms, schools, hospitals, and nursing homes, if the EPA stops at simply the large emitters.

I have asked for a plan from the administration on how she will address losing court cases if the agency is sued for picking winners and losers. Her response in a committee hearing 3 weeks ago is she could not share with me any such plans in that forum.

I have posed the question to the administration: If you can't share information with the elected representatives of the 50 States, then in what forum, if not a Senate hearing, can you share the information?

I am confident the majority believes they have a strong chance at passing something along the lines of the Waxman-Markey bill this Congress regarding climate change. They are hopeful they can get something to the President for him to sign. If hope alone could pass legislation, we could all adjourn early. But hope is not certainty. The negative effects of the endangerment finding on the American economy is certain.

The bottom line is that the nominee, as well as Lisa Jackson and the administration, appears to have no credible plan to use the Clean Air Act in a way to regulate climate change.

There is only one responsible choice for us to make. Let us take this regulatory ticking timebomb off the table. This is why I plan to introduce a bill very soon that will take the Clean Air Act out of the business of regulating climate change.

I wish to give every Member an opportunity to join me in giving the Senate and the American people the time we need to forge a sound energy and climate strategy, a strategy that makes energy as clean as we can—and I am talking about American energy—as clean as we can, as fast as we can, without raising energy prices for American families.

Let's develop all of our energy resources—our wind, our solar, our geothermal, hydro, clean coal, nuclear, and natural gas. We need an "all of the above" strategy to address our Nation's needs. As Lisa Jackson, the EPA Director, stated on a recent trip to my home State of Wyoming, "As a home of wind, coal, and natural gas, Wyoming is at the heart of America's energy future." That is because Wyoming has it all—coal, wind, natural gas, oil, and uranium for nuclear power. We have it all, and we need it all. I look forward

to working with my colleagues, as well as Ms. Jackson, to make that happen.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

EPA POLICIES

Mr. GRASSLEY. Mr. President, I wish to speak about Regina McCarthy's nomination but not about the nominee or her qualifications. Rather, I will highlight a few concerns I have with the EPA and the burdens being placed on those in rural areas and agriculture because of EPA actions.

A few weeks ago, I had the pleasure of joining President Obama for lunch. While the purpose of the lunch was to discuss health care reform, I took the opportunity to bring up a few concerns I have with EPA and agriculture. In particular, I raised four issues where EPA policies are causing tremendous concern and are burdening family farmers. The issues I raised to the President are indirect land use attributed to biofuels; second, fugitive dust; three, greenhouse gases and livestock producers; and, four, point source pollution permits.

Since that meeting with the President, I have had follow-on meetings with Nancy Sutley, chair of the Council on Environmental Quality and also the President's legislative staff. They heard me out. They seemed sympathetic to the concerns I raised. However, I am not sure the message is being relayed to the EPA bureaucrats.

The first issue pertains to a component of the new Renewable Fuels Standard that requires various biofuels to meet specified lifecycle greenhouse gas emission reductions. The law specifies that lifecycle greenhouse gas emissions are to include direct emissions and significant indirect emissions from indirect land use.

In the proposed rule changes released by EPA last week, they rely on incomplete science and inaccurate assumptions to penalize U.S. biofuels for so-called indirect land-use changes. The fact is, measuring indirect emissions of greenhouse gases is far from a perfect science. There is a great deal of complexity and uncertainty surrounding this issue. Because of this uncertainty, the EPA has committed to an open and transparent review by the public.

The EPA compiled a system of models to analyze land-use impacts of U.S. biofuels policies. They have indicated that these models have been peer reviewed and that they stand up to scientific scrutiny. That is true for the models independently, but—and a big but—it is not true for the way the EPA has overlaid and integrated their models. In addition, the models are not publicly accessible. There is inadequate data in how the models and data have integrated.

As it stands, stakeholders are unable to replicate the EPA's results. So this process is neither open nor is it transparent.

Under the EPA's analysis, ethanol produced from corn reduces greenhouse gas emissions by 16 percent compared to gasoline. However, if you remove the murky science of emissions from indirect land-use changes, corn ethanol reduces greenhouse gas emissions by 61 percent compared to the gasoline. So one can see that sound science plays a very important role in whether ethanol is more environmentally positive or less environmentally positive.

The EPA's models conclude that international land use contributes more in greenhouse gases than the entire direct emissions of ethanol production and use—from the growing of their crops, the production of ethanol at the refinery, up to and including tailpipe emissions. The ripple effects are greater than the direct effects. Wouldn't you think you ought to take more into consideration for the direct effects? The fact is, the model the EPA has cobbled together to measure indirect land use is far from scientific. It is more like a guess.

The rule indicates that itself by including the word "uncertainty." Understand, this is an EPA rule that talks about the science of indirect land-use calculation, and it uses the word "uncertainty" more than 60 times.

Even larger in this debate is the role of common sense. It defies logic that the EPA would try to blame a farmer in my State of Iowa for the actions of farmers or developers in Brazil. Do they think Brazilians are waiting to see what I am going to plant on my farm, for instance, before they plant their crops in Brazil? It does not pass the commonsense test. The facts do not support it either.

During the past 5 years, when biodiesel and ethanol production in the United States ramped up, Brazilian soybean acres decreased and corn acres remained unchanged. See, there is no relationship.

Amazon deforestation has also fallen in the past 5 years. A recent study indicated that the primary reason for land clearing was for timber production and land grabbing, followed by cattle farming, not because of ethanol production in the United States. So nowhere on the list—we are talking about a list from a study—was U.S. biofuel production.

I think this debate comes down to a few simple questions: Do we want more production of green fuels or less production? Do we want greater dependency on Iran and Venezuela for energy needs or less dependence? Do we want to increase our national security by reducing foreign dependence on energy?

I don't think the people at EPA get the big picture, and I am pretty sure they don't understand how American agriculture works. While the EPA's actions have a significant impact on the rural economy and the agriculture industry, it is clear the EPA has a lack of understanding of American agriculture. I know this to be the case regarding the indirect land use.

Margo Oge, the Director of the office in charge of this rule, admitted during a committee hearing in the House of Representatives last month that she has never been on a farm in the United States. How can regulators with such a great impact on the agricultural industry have so little understanding of the industry they are regulating? We need to encourage some commonsense thinking in EPA. So I have invited Administrator Lisa Jackson and a number of EPA officials to come to Iowa to visit a farm, to see firsthand how the agricultural industry works.

I have also invited Regina McCarthy, who should be confirmed by the Senate today. She will be Assistant Administrator for the Office of Air and Radiation. I have also invited Margo Oge, the Director I referred to, the Director of the Office of Transportation and Air Quality, the office that wrote these regulations on indirect land-use changes.

Another issue I brought up with the President that I am concerned about is EPA's attempt to regulate particulate matter.

In 2007, the EPA published the "Clean Air Fine Particle Implementation Rule" in which the EPA inappropriately opted for the administrative convenience of regulating all particles that fall within the fine PM size range the same, including dust.

Instead they should have appropriately based the regulation on particle composition.

Essentially, this rule treats dust as though it were cigarette smoke, causing the same adverse health issues.

There are no scientific studies that show this to be the fact. Controlling dust from combining soybeans, gravel roads, and feedlots is impossible.

When it comes to a rule in the EPA that you have to keep dust on your farm within the property lines of your farm, think how nonsensical that approach is. Only God determines when the wind blows and only God determines when soybeans have 13 percent moisture and they have to be harvested immediately. We cannot make decisions based on EPA rules of when the wind blows or doesn't. God makes that decision.

Compliance with the more stringent fine PM standard will be unattainable for many farmers and ranchers.

The fine PM standard is health-based and must be met at the property line of each individual operation regardless of cost.

This could essentially require farmers to sell some of their cattle, combine wet crops, or wall in their roads and driveways.

This would be a ridiculous way to regulate agriculture.

The next concern I have with the EPA is their decision not to appeal a Sixth Circuit decision which vacated an EPA rule that exempted pesticides applied under the Clean Water Act.

The EPA rule in question had exempted pesticides applied near or into

waters of the United States from obtaining permits when applied in accordance with the Federal Insecticide Fungicide, and Rodenticide Act.

In vacating the rule, the court issued an opinion declaring that agricultural sprayers and nozzles are point-source conveyances and that all residues and excesses of chemical pesticides that remain in water after the beneficial use is completed are "pollutants" under the Clean Water Act.

I share concerns of many who represent agricultural states as to how the EPA is going to implement the new permitting process without creating a burden on our farmers.

Producers could face legal liability if a permit is not issued quickly, yet the farmer needs to spray immediately.

I urge the EPA to draft a flexible rule that does not impede a producer's ability to apply pesticides and allows emergency application to be done expeditiously.

If they don't, we are going to have major problems on our farms when bugs, weeds, and disease show up.

The final issue is related to some of Senator BARRASSO's concerns with the nominee we are considering. That is, the direction the EPA is heading toward regulation of greenhouse gases under the Clean Air Act.

While this could have wide ranging, unforeseen effects on all sorts of small businesses, I want to talk about how agriculture could be affected.

The Clean Air Act was designed for more traditional types of pollution that can have a direct negative effect on human health and the environment in relatively small quantities.

Given the emissions thresholds in the law, a family farm cattle operation, for example, could be considered an emitter just like a factory smokestack, with all the red tape and costs that entails.

And, at the end of the day, how are you going to get cows to stop passing gas?

Nancy Sutley assured me that EPA has no desire to regulate livestock emissions in this way.

However, Senator BARRASSO raises some good points about what would happen should environmental groups follow through on their threats to sue EPA to force them to regulate sources as small as family farms.

Rather than rely on EPA's assurances, I would like these questions answered before EPA goes any further down this road.

I am hoping that a visit to the heartland will help them better understand the real world implications of some of their decisions.

They owe it to the hardworking farmers and ranchers to get a better understanding of how U.S. agriculture works.

Hopefully, they will realize a little common sense will go a long way when making broad policy decisions that affect the farmers who put food on their table.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

RAILROAD ANTITRUST ENFORCEMENT ACT

Mr. KOHL. Mr. President, I rise to speak about an agreement we have reached with Senator ROCKEFELLER regarding today's planned consideration of the Railroad Antitrust Enforcement Act. Before describing our agreement, I would like to say a few words about this legislation.

We believe this legislation is essential to restoring competition to the Nation's crucial freight railroad sector. Freight railroads are essential to shipping a myriad of vital goods—everything from coal used to generate electricity to grain used for basic foodstuffs. But for decades, the freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy because of their outmoded and unwarranted antitrust exemptions. Our legislation is designed to eliminate the obsolete antitrust exemptions that protect freight railroads from competition.

This bipartisan legislation has 11 cosponsors, including members of both the Judiciary Committee and Commerce Committee, and was reported out of the Judiciary Committee on a unanimous 14-to-0 vote in March.

The railroad industry's obsolete antitrust exemptions resulted in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four class I railroads providing nearly 90 percent of the Nation's freight rail transportation. Three decades ago, by contrast, there were 42 class I railroads. A 2006 GAO report found shippers in many geographic areas "may be paying excessive rates due to a lack of competition in these markets."

The ill-advised effects of these consolidations are exemplified by the high prices paid by captive shippers; namely, industries served by only one railroad. A recent study by the Consumer Federation of America found that rail shipping rates for captive shippers are \$3 billion higher than they would be if the market were competitive. These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, results in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, reduces earnings for American farmers who ship their products by rail, and raises food prices paid by consumers.

Repeal of the railroad antitrust exemption is supported by the attorneys general of 20 States and a wide range of consumer organizations and leading industry trade organizations, including the American Public Power Association, the American Chemistry Council, the National Farmers Union, the

American Corn Growers Association, and the National Industrial Transportation League, as well as many more.

Once their outmoded antitrust exemptions are removed, railroads will be subject to the same laws as the rest of the economy. Government antitrust enforcers will finally have the tools to prevent anticompetitive transactions and practices by railroads. Likewise, private parties will be able to utilize the antitrust laws to deter anticompetitive conduct and to seek redress for their grievances. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our Nation's antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, and to keep prices low and quality of service high. The railroad industry is no different. All those who rely on railroads to ship their products deserve the full application of the antitrust laws to end the anticompetitive abuses all too prevalent in this industry today.

That is why I am so pleased by the agreement that I have reached today with Senator ROCKEFELLER. He has agreed to include this necessary repeal of the railroads' unwarranted antitrust exemption in his comprehensive bill to reform the freight rail industry and the Surface Transportation Board when that bill is introduced in the coming weeks. Senator ROCKEFELLER has also agreed that his comprehensive rail reform bill will address a specific railroad practice that is of great concern to me—a practice known as paper barriers. He has pledged that his legislation will give the STB enhanced power to address this issue so that shippers are not denied the benefit of competition in relation to these arrangements. With this agreement, we have avoided a potentially divisive floor debate and we have the solid support of the distinguished chairman of the Commerce Committee for repealing the antitrust exemption and addressing paper barriers.

I thank my friend from West Virginia for his compromise as well as his support for the need to reform the freight rail system in the United States in the interest of all parties, including rail shippers and consumers.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF REGINA McCARTHY

Mrs. BOXER. Mr. President, as chairman of the Environment and Public Works Committee, I look forward to

the Senate's vote this morning on the confirmation of Regina McCarthy to be Assistant Administrator of the Office of Air and Radiation at the Environmental Protection Agency. I am happy to report to the Senate that my ranking member, Senator INHOFE, supports her as well, and he wanted to make that point.

The Assistant Administrator for Air and Radiation plays a crucial role in developing and improving programs that better protect public health and the environment, and she also will help address critical threats to our families and our communities. Regina McCarthy is very qualified to be Assistant Administrator. She comes to this position with a stellar record of achievement. During her hearing before the EPW, she impressed us all with her deep firsthand knowledge of clean air policy. She has three decades of experience in public service. She has a unique record of accomplishments in addressing air pollution at the State level in Massachusetts as well as Connecticut.

Here is the thing: She will bring a spirit of bipartisanship to this critical EPA office that is focused on protecting public health and the environment. In Massachusetts, Regina McCarthy served under Governors Cellucci and Romney, both Republicans. She served as Assistant Secretary for Policy at the Office of Environmental Protection and Deputy Secretary of the Office of Commonwealth Development. In 2005, Republican Governor Jodi Rell of Connecticut—another Republican—appointed Regina to be Commissioner of Connecticut's Department of Environment. So Regina's ability to work with people on both sides of the aisle is clear. She wants to solve the serious air pollution problems facing our families and communities, and I believe her experience in a bipartisan world will greatly help her.

California faces some of the most dangerous air pollution in the country. My State is a magnificent State, but it has its problems because we have the busiest ports in the Nation. We actually are responsible for taking care of 40 percent of the Nation's imports, and those goods are brought into our ports by ships that, unfortunately, still use—many of them—a highly polluting fuel called bunker fuel. And when we look at the rates of cancer across this Nation, you see clusters of cancer at all of our ports, and a lot certainly at our ports in California.

I worry very much about those families. We have been able to work in a bipartisan way—although not quickly enough, in my view—to make sure that these ships get away from this bunker fuel, and actually we are working very hard with the Obama administration, as we did with the Bush administration, on international treaties to move us away from this very polluting bunker fuel. So we are making great progress there, but we still have a lot of the trucks at our ports. We are working closely with, in this case, Los